



GRANTED

The moving party is hereby **ORDERED** to provide a copy of this Order to any pro se parties who have entered an appearance in this action within 10 days from the date of this order.

747-18

MJ Menendez

Jefferson District Court Judge

DATE OF ORDER INDICATED ON ATTACHMENT

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CO Jefferson County District Court 1st JD

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**DISTRICT COURT, JEFFERSON COUNTY,
COLORADO**

Court Section

100 Jefferson County Parkway

Golden, Colorado 80401-6002

**STATE OF COLORADO, ex rel. JOHN W. SUTHERS,
ATTORNEY GENERAL,**

Plaintiff,

v.

**FAMILY RELIEF FUND d/b/a DISABLED
VETERANS CARE CENTER, a Colorado non-profit
corporation, and RAYMOND E. SMITH, an individual,
and MARLENE STOKES, an individual,**

Defendants.

▲ COURT USE ONLY ▲

Case No.: 08CV5049

**ORDER: DEFAULT JUDGMENT AGAINST DEFENDANTS FAMILY RELIEF
FUND AND MARLENE STOKES**

The Court, having reviewed the entire record in this matter, the pleadings, motions, and Plaintiff's Motion for Default Judgment Against Defendants Family Relief Fund ("FRF") and Marlene Stokes, and the supporting Affidavits attached to the Motion, and being fully advised in the premises,

FINDS and CONCLUDES that default judgment should be entered for Plaintiff the State of Colorado ex rel. John W. Suthers, Attorney General against Defendants FRF and Stokes for the following reasons:

1. This Court has subject matter jurisdiction in the matter presented herein by virtue of § 6-1-110(1), C.R.S. (2008). The Court has personal jurisdiction over FRF and Stokes, who were personally served process in this matter pursuant to C.R.C.P. Rule 4(e).
2. FRF is located in Jefferson County, and Stokes resides in Jefferson County. Therefore, venue is proper in the county of Jefferson, Colorado, pursuant to § 6-1-103, C.R.S., and Colo. R. Civ. P. 98 (2008).
3. Pursuant to Rule 121 § 1-14, Defendants FRF and Stokes are not minors,

incapacitated persons, officers or agencies of the state, or in the military.

4. Plaintiff served process, pursuant to C.R.C.P. Rule 4(e), on FRF and Stokes on November 24, 2008. This Court entered a Preliminary Injunction against FRF and Stokes on December 18, 2008, at which time the Court advised them that they had up to and including January 20, 2009 to file and answer to Plaintiff's Verified Complaint. FRF and Stokes did not file an answer or other response to Plaintiff's action within the time allowed pursuant to C.R.C.P. 12(a).

5. Plaintiff certifies that it provided FRF and Stokes written notice of its application for default judgment three days prior to filing its Motion for Default Judgment, pursuant to Rule 55. *See, Plaza del Lago Townhomes Ass'n, Inc. v. Highwood Builders, LLC*, 148 P.3d 367, 371 (Colo. App. 2006).

A. Permanent Injunction

6. This Court is expressly authorized to issue an injunction to enjoin ongoing violations of the CCPA by § 6-1-110(1), C.R.S (2008):

(1) Whenever the attorney general or a district attorney has cause to believe that a person has engaged in or is engaging in any deceptive trade practice listed in section 6-1-105 or part 7 of this article, the attorney general or district attorney may apply for and obtain, in an action in the appropriate district court of this state, a temporary restraining order or injunction, or both, pursuant to the Colorado rules of civil procedure, prohibiting such person from continuing such practices, or engaging therein, or doing any act in furtherance thereof. The court may make such orders or judgments as may be necessary to prevent the use or employment by such person of any such deceptive trade practice or which may be necessary to completely compensate or restore to the original position of any person injured by means of any such practice or to prevent any unjust enrichment by any person through the use or employment of any deceptive trade practice.

§ 6-1-110(1), C.R.S.

7. Plaintiff, by means of its Verified Complaint and its Motion for Temporary Restraining Order and Preliminary Injunction supported by affidavits, has shown to this Court probable cause that:

- a. Defendants have knowingly and intentionally violated the Charitable Solicitations Act, Colo. Rev. Stat. §§ 6-16-101 through 113 (2008) ("CCSA") and the Colorado Consumer Protection Act, Colo. Rev. Stat. §§

6-1-101 through 115 (2008) (“CCPA”) in their operation of FRF. FRF purports to collect and distribute charitable donations to feed needy individuals, specifically senior citizens and veterans. Defendants have failed to provide any credible evidence that thousands of dollars donated to FRF since November 2007 actually go to the benefit of the needy.

- b. Defendants wrongly imply to potential donors that they collect money for Thanksgiving Baskets or a food bank when in fact FRF operates no such food bank. Defendants’ only business location is their apartment in Lakewood. Although Defendants claim that they find donation recipients through word-of-mouth from families and churches and donors, they are unable to provide any names or contact information of these referrals or recipients.
- c. Defendants also say that they distributed money collected to needy individuals whom Defendant Smith knew along West Colfax and that Defendant Smith would take the needy individuals to a local King Soopers to buy food if he does not trust them. However, Defendants cannot provide any names or contact information of individuals to verify these activities.
- d. During a civil investigative demand hearing on October 31, 2008, Defendants stated that FRF has used money collected through solicitations to donate \$8,000 worth of new clothes to the Jefferson County Action Center, Inc. Upon calling JCAC, Plaintiff learned that JCAC had no record of receiving \$8,000 worth of new clothes from FRF, Stokes or Smith.
- e. Defendants mislead consumers about the status and affiliation of FRF by wrongly implying that FRF is either affiliated with or has replaced a charity called Helping Hands for the Homeless Prevention. Defendants further mislead consumers by failing to disclose that FRF is not tax-exempt.
- f. Defendants knowingly solicited and collected money from donors without a valid registration from the Colorado Secretary of State and without maintaining the required records regarding donation recipients.

8. Plaintiff has shown and satisfied the necessary factors to obtain a permanent injunction: success on the merits; a danger of real, immediate, and irreparable injury which may be prevented by injunctive relief; lack of a plain, speedy, and adequate remedy at law; no disservice to the public interest; and balance of equities in favor of the injunction. *City of Golden v. Simpson*, 83 P.3d 87, 96 (Colo. 2004), *citing*, *Rathke v. MacFarlane*, 648 P.2d 648, 653-54 (Colo.1982); *See, Baseline Farms Two, LLP v. Hennings*, 26 P.3d 1209, 1212 (Colo. App. 2001), *citing*, *Lloyd A. Fry Roofing Co. v. State Department of Air Pollution*, 191 Colo. 463, 553 P.2d 200 (1976) (supporting the proposition that when the Colorado Attorney General seeks an injunction to enforce state laws affecting the public interest, the Attorney General is not required to plead or prove immediate or irreparable injury).

9. Plaintiff has no adequate remedy at law and the remedy of a permanent injunction is appropriate in the circumstances of this case.

10. This Court further finds that FRF and Stokes will suffer no undue hardship by the entry of a permanent injunction since FRF and Stokes have no right to continue to engage in unlawful and deceptive trade practices in the State of Colorado, or to collect money from consumers as a result of such unlawful and deceptive conduct in violation of the CCPA.

11. Thus, this Court orders as follows:

a. FRF and Stokes, and any other persons under their control or in active concert or participation with Defendants who receive actual notice of this Court's Order, are permanently enjoined from soliciting and accepting donations on behalf of FRF.

b. Defendant Stokes is further permanently enjoined from soliciting and accepting donations on behalf of any charity or purported charity in Colorado.

B. Restitution and Civil Penalties

12. The CCPA's broad legislative purpose is to "provide prompt, economical, and readily available remedies against consumer fraud," *Western Food Plan, Inc. v. District Court in and for the City and County of Denver*, 598 P.2d 1038, 1041 (Colo. 1979). Accordingly, the CCPA provides that this Court may make such judgments as may be necessary to "completely compensate or restore to the original position of any person injured by means" of a deceptive trade practice. § 6-1-110(1), C.R.S.

13. This Court finds that the affidavit by investigator Rebecca Wild submitted with Plaintiff's Motion for Default adequately establishes the amount of restitution for which judgment should be entered. Investigator Wild reviewed the receipts for donations that consumers made to FRF, and found that those receipts totaled \$41,740.

14. The CCPA further provides for an award of civil penalties:

6-1-112 Civil penalties. (1) Any person who violates or causes another to violate any provision of this article shall forfeit and pay to the general fund of this state a civil penalty of not more than two thousand dollars for each such violation. For purposes of this subsection (1), a violation of any provision shall constitute a separate violation with respect to each consumer or transaction involved; except that the maximum civil penalty shall not exceed one hundred thousand dollars for any related series of violations.

15. In determining the amount of a civil penalty award, this Court considers the following concepts: (a) The good or bad faith of the defendant; (b) the injury to the public; (c) the defendant's ability to pay; and (d) the desire to eliminate the benefits

derived by violations of the Colorado Consumer Protection Act. *State v. May Dept. Stores Co.*, 849 P.2d 802 (Colo. App. 1992).

16. Based on the record, the Court finds that Defendants' violations of the CCSA and CCPA were deliberate, knowing and done in bad faith. Stokes and FRF solicited thousands of dollars from Colorado consumers under the guise of using that money for charitable purposes when none of that money was used for charity. They obtained that money through fraudulent representations that FRF was a tax-exempt charity, and that FRF was affiliated with another charity. Furthermore, after this Court entered a Temporary Restraining Order preventing Stokes and FRF from further soliciting and accepting donations to FRF, they ignored the Court's Order and continued to solicit and accept funds for FRF. *See* January 2, 2009 Order.

17. The Court finds that, based upon the affidavit of Investigator Wild submitted with Plaintiff's Motion for Default, Defendants obtained donations from approximately 1000 Colorado consumers.

18. This Court orders \$100,000 in civil penalties against FRF and Stokes based on a penalty of \$2,000.00 per consumer from whom they obtained a donation for the maximum penalty of \$100,000. This Court further orders that FRF and Stokes pay \$41,740 in consumer restitution for a total damages award of \$141,740.

19. FRF and Stokes shall be jointly and severally liable for the damages set forth in paragraph 18.

C. Use of Funds in Frozen Bank Accounts

20. Pursuant to section 6-1-110(1), C.R.S., this Court orders that all restrictions imposed by the TRO and Preliminary Injunction on Defendants' known bank accounts at Credit Union of Colorado and TCF Bank, and that any and all funds in those accounts be used solely to meet Defendants' obligations for monetary judgment as set forth below.

21. This Court therefore GRANTS Plaintiff's Motion for Default Judgment and ENTERS such final judgment against Defendants FRF and Marlene Stokes.

22. This Court further ACCEPTS Plaintiff's Rule 41 Notice of Dismissal of Claims Against Defendant Raymond Smith.

Dated this ____ day of _____, 2009.

BY THE COURT:

District Judge

This document constitutes a ruling of the court and should be treated as such.

Court: CO Jefferson County District Court 1st JD

Judge: Mj Menendez

Alternate Judge: Unassigned

File & Serve

Transaction ID: 24181579

Current Date: Mar 16, 2009

Case Number: 2008CV5049

Case Name: STATE OF CO et al vs. FAMILY RELIEF FUND DBA DISABLED VETERANS et al

Court Authorizer: Mj Menendez

/s/ Judge Mj Menendez